

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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DONNA MICHELLE LUKENS a/k/a DONNA  
MICHELLE THOMPSON,

Plaintiff-Appellant,

v

DOMINIC THOMAS LUKENS,

Defendant-Appellee.

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UNPUBLISHED  
December 12, 2013

No. 316617  
Gratiot Circuit Court  
Family Division  
LC No. 09-000039-DM

Before: MURPHY, C.J., and FITZGERALD and BORRELLO, JJ.

PER CURIAM.

Plaintiff appeals as of right from an order of the trial court denying her motion to modify custody, parenting time and support. For the reasons set forth in this opinion, we affirm.

Plaintiff and defendant were married in March 2006 and divorced in September 2009. They have two minor sons. The judgment of divorce provided that the parties were to have joint physical and legal custody of the children. On March 25, 2010 parenting time and custody was modified by stipulation. On July 13, 2010, plaintiff filed a motion to change domicile and the trial court ordered the parties to participate in a conciliation conference. The friend of the court recommended that the motion be denied and the trial court adopted the recommendation. Plaintiff filed another motion to change custody on October 31, 2011, but the motion was denied for failure to state proper cause or a change in circumstance.

The present motion to change custody was filed by plaintiff on May 7, 2012, and the trial court again referred the matter to the friend of the court. In the referral, the court indicated that plaintiff had “established proper cause or a material change of circumstances.” However, the court also clearly stated that “[t]he matter of proper cause or a material change of circumstances may be subject to further review at a court proceeding.” After the friend of the court issued its report and recommendation, plaintiff timely objected and requested a de novo review by the trial court. After an evidentiary hearing, the trial court found that plaintiff did not carry her burden of establishing proper cause or a change of circumstances.

Before modifying a custody award the trial court must find there is proper cause or a change of circumstances that the modification will be in the child’s best interests. MCL 722.27(1)(c); *Parent v Parent*, 282 Mich App 152, 154; 762 NW2d 553 (2009). The party

moving to modify custody must establish by a preponderance of the evidence an appropriate ground that would justify the trial court taking action. *Vodvarka v Grasmeyer*, 259 Mich App 499, 512; 675 NW2d 847 (2003). To establish a change in circumstances, “the movant must prove that, since the entry of the last custody order, the conditions surrounding custody of the child, which have or could have a significant effect on the child’s well-being, have materially changed.” *Id.* at 513. In child custody cases, “proper cause” means “one or more appropriate grounds that have or could have a significant effect on the child’s life to the extent that a reevaluation of the child’s custodial situation should be undertaken.” *Id.* at 511. Appropriate grounds should be based on the statutory best-interest factors, MCL 722.23, and are those that have or could have a significant impact on the child’s life. *Vodvarka*, 259 Mich App at 511. Only once proper cause or a change in circumstances has been proven may the trial court engage in a review of the statutory best-interest factors. *Id.*

Plaintiff argues that the trial court violated the principals of *stare decisis* by making a second, and conflicting, finding on proper cause or a change of circumstance after the de novo review. Plaintiff argues that the trial court’s finding of proper cause or a change of circumstance in the May 2012 order for referral was binding and plaintiff relied on that finding. We conclude that plaintiff’s *stare decisis* argument is without merit based, in part, on the foregoing:

“The essence of the common law doctrine of precedent or *stare decisis* is that the rule of the case creates a binding legal precept. The doctrine is so central to Anglo-American jurisprudence that it scarcely need be mentioned, let alone discussed at length. A judicial precedent attaches a specific legal consequence to a detailed set of facts in an adjudged case or judicial decision, which is then considered as furnishing the rule for the determination of a subsequent case involving identical or similar material facts and arising in the same court or a lower court in the judicial hierarchy.” [*People v Eliason*, \_\_\_ Mich App \_\_\_; \_\_\_ NW2d \_\_\_ (Docket No. 302353, issued April 4, 2013), quoting *Allegheny Gen Hosp v NLRB*, 608 F2d 965, 969-970 (CA 3, 1979) abrogated on other grounds *St Margaret Mem Hosp v NLRB*, 991 F2d 1146 (CA 3, 1993).]

This is not a situation where the decision is being applied in a subsequent case. Here, the decision in issue comes from the case under review. Consequently, the doctrine of *stare decisis* is inapplicable.

Plaintiff also argues that the court erred in not addressing the statutory best-interest factors. This Court must affirm all custody orders unless the trial court’s findings were against the great weight of the evidence, the trial court committed an abuse of discretion, or the trial court clearly erred on major legal issue. MCL 722.28; *Pierron v Pierron*, 486 Mich 81, 85; 782 NW2d 480 (2010). A trial court’s findings of fact, including whether proper cause or a change in circumstance has been established, is reviewed under the great weight of the evidence standard. *Corporan v Henton*, 282 Mich App 599, 605; 766 NW2d 903 (2009). Under this standard, this Court gives deference to the trial court’s findings unless “the trial court’s findings clearly preponderate in the opposite direction.” *Id.* (internal quotation marks and citation omitted). This Court reviews for an abuse of discretion the trial court’s discretionary ruling, such as to which party custody is granted. *Berger v Berger*, 277 Mich App 700, 705; 747 NW2d 336, lv den 482 Mich 896 (2008). When deciding custody matters, “[a]n abuse of discretion

exists when the trial court's decision is so palpably and grossly violative of fact and logic that it evidences a perversity of will, a defiance of judgment, or the exercise of passion or bias." *Id.* Finally questions of law are reviewed for clear legal error. *Id.* at 706.

The Child Custody Act, MCL 722.21 *et seq.*, promotes the best-interests of the child and is used to govern custody disputes. *Harvey v Harvey*, 470 Mich 186, 192; 680 NW2d 835 (2004). The best-interest factors are laid out in MCL 722.23. If there is an established custodial environment, the trial court may only change custody from that environment if the moving party shows by clear and convincing evidence that the modification is in the child's best interests. MCL 722.27(1)(c); *Parent*, 282 Mich App at 154.

In this case, the trial court determined that plaintiff did not establish the necessary proper cause or change in circumstances. Plaintiff does not maintain that the trial court's proper cause or change in circumstances finding was erroneous. Rather, plaintiff argues that the trial court should have never made the finding in the first place. The weight of the court's finding standing unchallenged, we conclude that the court did not err in failing to consider the best-interest factors. Only once proper cause or a change in circumstances has been proven may the trial court engage in a review of the statutory best-interest factors. *Vodvarka*, 259 Mich App at 513.

Affirmed.

/s/ William B. Murphy  
/s/ E. Thomas Fitzgerald  
/s/ Stephen L. Borrello